App F. IX-4

193

File No. 123-36

Previous References

Serial Nos. 1 – 2

Letter References.

Law 61-37-1-7

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for December 1936.

SUBJECT.

[illegible] Thanakoti [illegible] to Sri Kanyakaparameswari [illegible]

[illegible] Rep. Case & Temple Trustee

Nos. 29 - 2918 - 12 - 36

WD 0418—GPB—22,500—29-8-36

GENERAL AND REVENUE SECRETARIAT.

(Mines)

NOTES.

File No.

FILE HEADING.

Receipt of certain documents in connection with the [illegible]

FROM

[illegible]

No. [illegible] Dated [illegible] Received [illegible]

Diary No.	Enclos.	Spare copies	Serial No.

BRIEF ABSTRACT OF LETTER

[illegible]

NOTES AND ORDERS.

Law Section may perhaps be consulted regarding filing a suit against Mr Shanakoh's letter, as proposed by the C.C.

2 Asst. Secy. view taken with Chairman's [illegible] of 7/11/36

Subd. It is proposed to file a

12/11/36 Law

12 11 36

NOTES—First Sheet

WD 02552—GPB—5,000—10-7-80

civil suit against Mr Dhanakoti Setty to recover the amount due from him. Legal Opinion is sought in the matter.

19/11

Mr. K. Dhanakoti Chetty of Mysore was appointed Sole executor under the will of late Rev. Kanchikka Narasimha Setty of Chamarajpet, and was managing the Temple of Sri Kanyaka Parameswari at Chamarajpet. As per his request contained in his letter dated 9.3.31, and as per recommendations of the Muzrai Commissioner, the Government passed order on 28-8-31 that the Sri Sannidhi and its endowments may permanently be taken over under the management of the Government. The Temple is now under Govt. management. The testator had deposited a sum of Rs 2000/- in the Mysore Bank (Branch), Mysore City, for the performance of the Prathishta ceremony, and had authorised Mr. Dhanakoti Chetty to operate on the account. The amount was not however, utilised for that purpose. On his letter of 9.3.31, Mr Dhanakoti Chetty offered to place the said sum of Rs 2000/- at the disposal of the Government, as soon as the Sri Sannidhi was taken under Government management. He has not however done so till now, in

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The points on which legal opinion is now sought are (i) whether an action can be instituted on behalf of the Temple by the Govt for recovery of a sum endowed for it before the institution came under Govt management, and (ii) whether the evidence available is sufficient to succeed in the suit.

It seems to me that both the questions should be answered in the affirmative. In his letter of 9.3.31, Mr Dhanakoti Chetty says that he is prepared to surrender the amount of Rs 2000/-, less the expenses incurred up to date of actual surrender, as soon as orders accepting additional endowment are passed. The Govt. order no. 347-8 | Mug- 54-31-2 relates to the original endowment of Rs 10,000/- that had already been already accepted, and also to the offer of the additional amount of Rs 2000/-. The Government have therefore every right to take necessary action, including a suit, to recover the sum belonging to the institution; the fact that the amount in question was endowed to the Temple before the above G.O was passed does not in any way affect the rights of the Government. The recital in the will that Rs 2000/- were provided for 'Prathishta' ceremonies, and the admissions of Mr Dhanakoti Chetty in his letter of 9.3.31, that the sum was not [illegible]

WD 0417—CPB—30,000—8 9 36

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for the purpose, and is still available for being added on to the endowment funds of the Temple, constitute sufficient evidence in support of the intended suit. No question of limitation can also arise as Mr. Dharmakarta Chetty holds the amount in trust for the Institution.

BNR
25.11.36

G.O.No 1105 36
dated 25-11-36
Pdo 496/36-37
dt 25.11.36

Forwarded, with compliments, to the Government Advocate, for favour of concurrence or further advice

BNR
25.11.36

Returned with compliments.

No Do. 91/36-37
dt 1.12.36

I agree with the opinion that the suit can be filed to enforce the liability of the party to put back the money or to account for it properly. No question of limitation arises, at any rate for the present, because there is no specific article - applicable to the circumstances except the residuary one namely, Art.120 which prescribes a period of six years and that period has not elapsed from the date of acknowledgment of the liability by the party concerned.

The evidence is all one-sided and the acknowledgment is clear and unequivocal. The only defence

possible

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possible may be one of counter-claim in regard to the expenses he might have incurred on some other account but connected with the management of the temple or it may be a deduction in connection with this very - account. In either event, the burden will be on him to prove the right for deduction or counter-claim.

11) I should like to suggest one other thing in this connection. The institution has come under the - management of the Government under Sec.14 B of the Religious and Charitable Endowment Regulation. That Section comes in a Chapter whose title is "Public Religious and Charitable Institutions other than - Muzrai Institutions". This is not a Muzrai Institution because it is not in the "sole charge of the Government" as defined in Section 2(2)(i) of the Regn. So the provisions of this chapter apply to this - institution. Clause 2 of Sec.18 in the chapter - empowers the authorities to proceed against the ~~prox~~ party concerned in case of misappropriation, even though it might have occurred subsequent to the Govt. taking control of it. There is no doubt that on the facts of this case, it is a case of misappropriation. Even under the Criminal Law, a long delay like this extending over years and the party making no response for the demand to recoup are good enough - materials to give rise to the inference of liability under the Penal Code. A fortiari there is civil liability. If this be so, the remedy which I suggest has the merit of being cheaper and speedier.

suggest

NOTE—Contn. Sheet.

W D 0417—GPB—80,000—S 9-36

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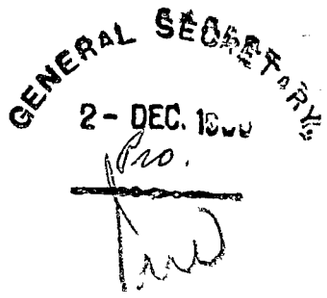
suggest that this method may be resorted to without much risk because even in the event of the party succeeding in raising technical objections to the validity of the procedure adopted, there is always the safety of a statement that he is an express or else in respect of this suit as mentioned in the note under reference.



Narendranath Naicker
Government Advocate.

GSN/30.11.36

(1) I should like to add to my previous note, that with due respect, I am unable to agree with the opinion of the learned Government Advocate that this is not a Muzrai Institution and that it is not in the 'sole charge of the Government' as defined in Section 2 (2) (i) of the Regulation. The Government order of 1931 (Flag H) shows that the Muzrai Commissioner proposed that the institution and its endowments might be permanently taken under Government management under Section 14 (b), and that his proposals were sanctioned. Once an institution becomes a Muzrai Institution its control and management vests in the Government. The fact that a Committee of Dharmadarsis have been appointed for supervising

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The affairs of the institution cannot be said to be in the sole charge of Government. The Dharmakartas or members of the Committee can exercise only such powers as are delegated to them by Government (see 9 Mys L J 164). It seems to me therefore that the institution being a Muzrai Institution, Section 18 cannot apply and that the suit is the only remedy.

Asst Secy. Muz for
with compliments

3 12-36

4/12/36

(3) (Sri Kelvy)

The proposal of the Muzrai Comr to file a suit agst Mr Dhanakoti Chetty for recovering money due to the temple may be appd.

(1) Whether Ch VI Sec 18 of the Rel. Endts Regn. apply in the case of such institutions has come up in other connections also. This will be further exd separately

5/12/36

First Member

WD 0417 -C PL-30,000-8 1 (

NOTE—Contn Sheet.

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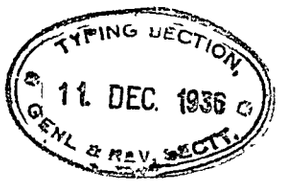
A draft G.O. sanctd is subd



4418
7 NOV. 1936
MUZRAI COMMISSIONER

OFFICE OF

See file

Bangalore,...4th..November ...193 6

Memo 123-36-1

FROM

K. V. ANANTARAMAN, ESQ., B.A.,
Muzrai Commissioner in Mysore

To

GENERAL SECRETARY.
6 NOV. 1936

M. Venkatesa Iyengar, Esq., M.A.,
Secretary to the Government of His Highness the Maharaja of Mysore,
General *Department.*

SIR, 9/6111/

Recovery of certain amount by Mr. Dhanakoti Setty of Mysore.

I have the honor to forward herewith a Note as required by Rule 66 of the Rules for the conduct of Legal Affairs of Government re. the above, received with letter No.C3-3425/35-36 dated 26th October 1936 from the Deputy Commissioner, Bangalore District, together with the records containing a copy of the Will of the late Mr. Kare Chikka Narasimhaiya Setty of Closepet.

2. In his petition dated 9th March 1931 to this office (enclosed in original) and on which G.O.No.347-8/Muz.54-31-2 dated 20-8-1931 directing that the temple of Sri Kanyakaparameswari and its endowments be permanently taken under Government management is based, Mr. D. Dhanakoti Setty has accepted his liability for the sum of R 2,000 in unequivocal terms and has agreed to surrender the same less the expenses, if any, incurred up-to-date of actual surrender (vide para 3 of this office letter No.C.1622/22-23 dated 18-8-1931 addressed to the Financial Secretary to Government). As Mr Dhanakoti Setty has not responded to the several notices sent to him and has not also surrendered the amount as agreed to by him, I request sanction of Government to authorise the Public Prosecutor to file a suit against him, the cost thereof being met from the funds of the temple at Closepet.

I have the honor to be,
Sir,
Your most obedient servant,

K. Chandrasekhar
Muzrai Commissioner.

Diary. No of letter replied to .....

Section Mucq

File No. 129-36

Serial No. 9

General and Revenue Secretariat

( )

the *193*

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 15/12/ 193 .

Signed by M. Mir Sufdar Hussain

Read— G.O. No 347 & / Mucq 36-37.

2 dated 28.8.1937 directing that the Temple of Sri Kanyaka-

parameshwari and its endowments at Closepet and ... be permanently taken under

Govt management.

2) Letter No C 1273/38-3 dated

~~Order thereon. No.~~ 4.11.1936 from the

M.C in Mysore requesting ~~sanction~~

~~to~~ authorise the Public

Prosecutor to file a suit

against Mr Bhaskaki Setty

of Mysore to recover a sum

of Rs 2000 due from him to

the whole temple, the case

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

being met from the funds
of the temple at Cherokee

Order 819-20
Sanctioned

2
11/14
S/ Saul Leaphart
Bldr
10/n

The file with papers
can be called
Copy to Law Section

List of Enclosure

Copied by

Examined by

WD 0185—GPB—15,000—13-8 34

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

Read -

Government Order No.347-8/Muz.54-31-2 dated 28th August 1931 directing that the temple of Sri Kanyakaparameswari at Closepet and its endowments be permanently taken under Government management.

2. Letter No.1273/34-5 dated 4th November 1936 from the Muzrai Commissioner in Mysore, requesting that the Public Prosecutor may be authorized to file a suit against Mr.Dhanokoti Setty of Mysore to recover a sum of Rs.2000 due by him to the above temple, the cost being met from the funds of the temple at Closepet.

Order No. 814-20/Miscg 12-3-36-2

Dated, Bangalore, 17th December 1936.

Sanctioned.

Mir Sajad Hussain.
for General Secretary to Government.

To

The Muzrai Commissioner with papers,

The Comptroller to Government.